September [XX], 2019

**SUBMITTED VIA WWW.REGULATIONS.GOV**

Office of the General Counsel

Rules Docket Clerk

Department of Housing and Urban Development

451 Seventh Street SW, Room 10276

Washington, DC 20410-0500

**Re: Comments in Response to HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard, HUD Docket No. FR-6111-P-02**

To Whom It May Concern:

I write to you on behalf of [**INSERT ORGANIZATION**] in response to the Department of Housing and Urban Development’s (“HUD”) Implementation of the Fair Housing Act’s Disparate Impact Standard, which was published in the Federal Register on August 19, 2019 (RIN 2529-AA98; HUD Docket No. FR-6111-P-02) (“Proposed Rule”). The existing Disparate Impact Rule is a critical tool in combatting discriminatory housing policies that appear neutral on their face but often have a devastating impact on survivors of gender-based violence—the vast majority of whom are women. The Proposed Rule will fundamentally weaken this longstanding enforcement tool to the detriment of survivors and their families across the country. We strongly oppose any changes to HUD’s current Disparate Impact Rule.

[**Description of Organization and the Scope of Organization’s Work:** State your organization’s mission statement. Describe your organization and the work that your organization does. Highlight any major projects or services that relate to housing and gender-based violence. Example: “Our organization provides direct services, outreach, and education to low-income survivors of gender-based violence facing barriers to safe and stable housing. Our organization, for example, provides shelter and transitional housing services to survivors of domestic violence and sexual assault in the XXX region.”]

[**Description of Clients/Communities Served:** Describe the clients or communities that you serve. Include the demographics of your clients and communities, if possible – including race, color, familial status, national origin, disability, and/or gender. Example: “Our organization serves survivors of sexual violence, the vast majority of whom are women. Of our clients, 33% are African American; 23% are Latinx; 15% are white; 5% are Asian; and 24% are multi-racial.”]

Housing is critical to an individual’s wellbeing. [**Needs of and Barriers Faced by Clients/Communities Served:** Explain the particular needs and barriers faced by your clients – while focusing on housing-related challenges. Highlight the role that access to safe and stable housing plays in your clients’ lives. Explain why barriers to fair housing would harm your clients or community. Example: “Our clients are often transitioning from temporary shelter and seeking permanent housing. In that process, many clients face barriers to securing housing as a result of their history of abuse.”]

Protecting access to housing for survivors of gender-based violence and their families is necessary and central to HUD’s mission. The [INSERT ORGANIZATION] urges HUD to rescind its Proposed Rule and preserve existing protections against unjust housing discrimination for the following reasons.

1. **HUD’s Proposed Rule Will Effectively Eliminate Housing Protections for Survivors of Domestic Violence, Sexual Assault, and Other Forms of Gender-Based Violence—the Vast Majority of Whom Are Women.**

Domestic violence is a primary cause of homelessness for women and children in the United States.[[1]](#footnote-1) Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.[[2]](#footnote-2) Access to housing is absolutely critical for survivors, as lack of safe and affordable housing options is regularly reported as a primary barrier to escaping abuse.[[3]](#footnote-3) Homelessness can also be a precursor to additional violence, because a survivor is at the greatest risk of violence when separating from an abusive partner.[[4]](#footnote-4) [Add any region-specific or community-specific information on the connection between housing stability/homelessness and domestic violence. Feel free to include quantitative or qualitative/anecdotal information of how housing comes up in your organization’s work.]

HUD has repeatedly recognized housing discrimination against domestic violence survivors as a significant fair housing issue,[[5]](#footnote-5) as women account for over 80 percent of domestic violence survivors.[[6]](#footnote-6) The harmful effects of housing instability are compounded for Native American women and women of color, who face both increased barriers to housing and disproportionate rates of violence.[[7]](#footnote-7) Housing discrimination against domestic violence survivors also implicates other protected classes. The rate of violence against women with disabilities, for example, is three times higher than the rate of violence against women without disabilities.[[8]](#footnote-8) Additionally, LGBTQ+ individuals experience high rates of domestic violence, while 71% of survivors reported that they were denied shelter because of barriers related to gender identity.[[9]](#footnote-9) [Include any additional data or anecdotal information specific to your community/client population that reflects how intersecting identities may pose increased barriers to housing].

Advocates have relied on HUD’s existing Disparate Impact Rule to protect survivors against unjust policies and practices that penalize survivors due to the abuse they’ve experienced, including some of the following:

* **Emergency Transfers.** Domestic violence survivors sometimes face obstacles from property owners and housing providers when they request emergency transfers within housing units to escape their abusers. Advocates have relied on the existing Disparate Impact Rule to challenge the failure to grant emergency transfer requests under the Fair Housing Act, often resulting in the adoption of new policies that ensure that survivors who are in danger may request emergency transfers.[[10]](#footnote-10) HUD’s Proposed Rule will weaken this enforcement tool, thereby jeopardizing housing for survivors that need it the most. [Include any data or anecdotal support for the importance of protections related to emergency transfers.]
* **Crime-Free Policies.** Some landlords and housing providers evict or threaten to evict domestic violence survivors based on “one-strike” or “crime-free” policies that punish survivors when abuse they experienced in their home.[[11]](#footnote-11) In [your service area], [describe how these policies play out in your jurisdiction. Include any examples where survivors were evicted or punished because of the abuse they experienced, where survivors were defending themselves, or where survivors were mistakenly arrested for the abuse that occurred against them]. The existing Disparate Impact Rule is critical for protecting survivors from further victimization due to the loss of their home.[[12]](#footnote-12)
* [Discuss any other scenarios where survivors have lost housing or been denied housing due to policies that appeared neutral but disproportionately harm survivors in practice. Give a detailed explanation of what they are and how they disproportionately impact domestic violence survivors.]
* **Nuisance Ordinances.** In many jurisdictions, nuisance ordinances coerce landlords to evict or threaten to evict households based on calls for police assistance or emergency services, disproportionately harming domestic violence victims. Research has demonstrated that nuisance and crime-free ordinances also disproportionately impact communities of color, low-income households, and people with disabilities.[[13]](#footnote-13) In 2016, HUD issued guidance on challenging the devastating consequences of nuisance ordinances on domestic violence survivors and other vulnerable and marginalized communities; using disparate impact to challenge such harmful ordinances was an important part of that guidance.[[14]](#footnote-14)

If HUD finalizes its Proposed Rule, advocates will no longer be able to rely on the Disparate Impact Rule to protect survivors and their housing. The proposed five-element prima facie case and options for rebuttal would create substantial additional hurdles for survivors and make it significantly harder to challenge these unjust policies and practices. HUD’s Proposed Rule, therefore, will undermine the vital role that the FHA has served in protecting fair housing for historically marginalized and vulnerable communities—and particularly for survivors of domestic violence.

1. **The Proposed Rule Will Violate HUD’s Obligations to Protect Families With Children Who are Seeking Housing.**

The effects of HUD’s Proposed Rule will be particularly severe for survivors with children, who face additional barriers to housing due to unjust housing policies and practices that disproportionately harm families with children. More than half of female domestic violence survivors live in households with children under the age of 10.[[15]](#footnote-15) Access to safe and affordable housing options is critical to prevent homelessness for survivors and their children as they try to escape abusive relationships.[[16]](#footnote-16) [Include any additional details regarding families and children in your community area or client populations, including demographic information or examples of the types of housing-related barriers that your clients face as a result of having children].

The existing Disparate Impact Rule affords vital housing protections for survivors with children and allows advocates to challenge unjust policies that harm families, such as overly restrictive occupancy requirements.[[17]](#footnote-17) Similarly, the FHA’s disparate impact theory has been used to challenge housing policies that restrict families from accessing certain amenities. In particular, advocates have challenged policies such as the following:

* **Occupancy Requirements.** Policies that impose overly restrictive occupancy requirements disproportionately harm families with children.[[18]](#footnote-18) Such policies significantly limit housing opportunities for families with children and often have the harshest consequences for low-income women of color. [Include any data or anecdotal evidence from your community/client population that illustrate how unjust occupancy requirements have presented barriers to housing for survivors of gender-based violence.]
* **Amenity Restrictions.** Policies that overly restrict the use of facilities that are overwhelmingly enjoyed by children, such as pools or courtyards, can be considered discriminatory under the FHA.[[19]](#footnote-19) For example, a landlord’s policy against congregating in common areas may have a discriminatory impact on families with children when evidence shows that children are more likely than adults to play, or congregate, in such places.[[20]](#footnote-20)
* [Add any other examples of policies or practices that unfairly limited housing opportunities for survivors with children].

**Conclusion**

HUD’s Proposed Rule would destroy the protections for survivors offered by the Disparate Impact Rule. This Proposed Rule directly contradicts HUD’s mission to affirmatively further fair housing and prevent discrimination against survivors of gender-based violence. Furthermore, the standard outlined in the Proposed Rule upends decades of fair housing case law and HUD’s enforcement.

Survivors of gender-based violence should feel protected under the Fair Housing Act. Property owners, housing providers, and local governments are increasingly enforcing discriminatory policies that not only bar women from accessing housing, but also evict them from their homes. [INSERT ORGANIZATION] urges HUD to immediately withdraw the Proposed Rule and instead advance housing policies that strengthen – not undermine – the disparate impact theory that allows for stable, safe, and affordable housing for all.

Please do not hesitate to contact [INSERT NAME] to provide further information.

[Name]

[Title]

[Insert contact information and add signature line if desired.]

[If submitting as a PDF, consider attaching any studies, reports, or other sources of information you referenced in your letter.]

Sincerely,

[ORGANIZATION NAME]

1. *See* ACLU Women’s Rights Project, *Domestic Violence and Homelessness* (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; *see also* U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America’s Cities: A 25-City Survey* (Dec. 2014), <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>. [↑](#footnote-ref-1)
2. Monica McLaughlin & Debbie Fox, National Network to End Domestic Violence, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), <https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf>. [↑](#footnote-ref-2)
3. *See* Charlene K. Baker et al., *Domestic violence, housing instability, and homelessness: A review of housing policies and program practices for meeting the needs of survivors*, 15 Aggression & Violent Behavior 430, 430–39 (2010), <https://b.3cdn.net/naeh/416990124d53c2f67d_72m6b5uib.pdf>. [↑](#footnote-ref-3)
4. *See id.* at 431.  [↑](#footnote-ref-4)
5. *See, e.g.*,U.S. Dep’t of Hous. & Urban Dev., *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)* (Feb. 9, 2011), <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>. [↑](#footnote-ref-5)
6. U.S. Dep’t of Justice, Office of Justice Programs, *Bureau of Justice Statistics Crime Data Brief: Intimate Partner Violence, 1993-2001* (Feb. 2003). [↑](#footnote-ref-6)
7. *See* McLaughlin & Fox, *supra* note 2, at 1; *see also* Carolyn M. West & Kalimah Johnson, National Online Resource Ctr. on Violence Against Women, *Sexual Violence in the Lives of African American Women* (Mar. 2013), <https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SVAAWomenRevised.pdf>; Smith, S.G., et al., *National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 state report* (Apr. 2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.  [↑](#footnote-ref-7)
8. American Civil Liberties Union et al., *Domestic Violence & Sexual Assault in the United States: A Human Rights Based Approach & Practice Guide* (Aug. 2014), <https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv_sa_hr_guide_reduce.pdf>. [↑](#footnote-ref-8)
9. National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2015* (2016), <http://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf>. [↑](#footnote-ref-9)
10. *See Blackwell v. H.A. Hous. LP,* Civil Action No. 05-cv-01225-LTB-CBS (D. Colo. 2005) (prohibiting discrimination against survivors of domestic violence and allowing them to request an emergency transfer when in imminent danger). [↑](#footnote-ref-10)
11. *See, generally*, *Warren v. Ypsilanti Hous. Auth.*, Case No. 4:02-cv-40034 (E.D. Mich. 2003) (defendant agreed to cease evicting survivors of domestic violence under its “one-strike policy”). [↑](#footnote-ref-11)
12. *See id.* [↑](#footnote-ref-12)
13. American Civil Liberties Union & New York Civil Liberties Union,  *More Than a Nuisance: The Outsized Consequences of New York’s Nuisance Ordinances* (2018), <https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf>. [↑](#footnote-ref-13)
14. U.S. Dep’t of Housing & Urban Development, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services* (2016), available at <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>. [↑](#footnote-ref-14)
15. Marielsa Bernard, *Domestic Violence’s Impact on Children*, 36-JUN Md. B.J 10, 12 (May/June 2003). [↑](#footnote-ref-15)
16. Meris L. Bergquist, Esq., *After the Violence: Using Fair Housing Laws to Keep Women and Children Safe at Home*, 34-SPG Vt. B.J. 46, 46–47 (Spring 2008). [↑](#footnote-ref-16)
17. *See* 42 U.S.C. §§ 3601-19; *see also Hous. Opps. Project for Excellence, Inc. v. Key Colony No. 4 Condo. Assoc.,* 510 F. Supp. 2d 1003 (S.D. Fla. 2007) (holding that residents had successfully stated a disparate impact claim because the restrictive occupancy rules had discouraging effects on families with more than two children). [↑](#footnote-ref-17)
18. *See id.*; *see also Rhode Island Comm’n for Human Rights v. Graul*, 120 F. Supp. 3d 110, 125–27 (D.R.I. 2015); *United States v. Badgett*, 976 F.2d 1176, 1178–79 (8th Cir. 1992). [↑](#footnote-ref-18)
19. *See id.*  [↑](#footnote-ref-19)
20. *Khalil v. Farash Corp.*, 260 F. Supp. 2d 582, 589 (W.D.N.Y. 2003). [↑](#footnote-ref-20)